

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

JOHN A. ORTLAND

PLAINTIFF

V.

CIVIL ACTION NO. 1:07cv1075LG-RHW

SHERIFF BRISOLARA, FORMER  
SHERIFF GEORGE H. PAYNE, JR.,  
MAJOR DIANNE GASTON-RILEY,  
CAPTAIN PHIL TAYLOR, et al.

DEFENDANTS

**MOTION TO COMPEL**

COME NOW the Defendants, George Payne, Jr., Dianne Gaston-Riley, Phil Taylor and Melvin Brisolara, in their official and individual capacities, by and through their attorneys of record, Dukes, Dukes, Keating & Faneca, P.A., and pursuant to the Federal Rules of Civil Procedure, file this their Motion to Compel. In support of same, Defendants would show unto this Honorable Court the following, to wit:

**I.**

Defendants' first set of Interrogatories, Requests for Production of Documents, and Requests for Admission were propounded to the Plaintiff on or about June 4, 2009. [54, 55 and 56]. Responses to said discovery were therefore due on or about July 4, 2009. To date, Plaintiff has not served any responses to Defendants' discovery requests.

**II.**

The undersigned certifies that a good faith effort has been made to resolve this discovery dispute pursuant to uniform District Court Rule 37.1. As stated in the August 25, 2009 correspondence, attached hereto as **Exhibit "A"**, counsel for these Defendants delivered via Federal Express next day delivery, a good faith letter to Plaintiff, requesting that Plaintiff submit his

responses to discovery or contact counsel for the Defendants on or before 12:00 noon on August 28, 2009. See Exhibit “A”. As requested, Plaintiff contacted undersigned counsel for the Defendants via telephone, before noon on Friday, August 28, 2009 to inform undersigned counsel that Plaintiff was not currently in a position to provide his responses to the discovery but did intend to do so at some undisclosed time in the future, and requested a thirty (30) day extension.

### **III.**

On August 25, 2009, these Defendants filed a Motion for Extension of Time to Conduct Discovery and file Dispositive Motions, in light of Plaintiff’s failure to respond to the discovery at issue here. [58]. To date, the Court has not made a final ruling on Defendants’ Motion for Extension of Time, and therefore Defendants request that Plaintiff be compelled to provide the discovery responses immediately. Alternatively, and in the event the Court grants Defendants’ Motion for Extension of Time, these Defendants do not object to a ten (10) day extension.

### **IV.**

In light of the foregoing, Defendants request an Order be entered against the Plaintiff compelling him to furnish responses to Defendants’ discovery requests, either immediately or in the alternative, within ten (10) days from the date of the Court’s order on this Motion. Counsel for the Defendants hereby certify that they have attempted a good faith resolution to this matter pursuant to Uniform Local Rule 37.1 for the Southern District of Mississippi.

WHEREFORE, PREMISES CONSIDERED, these moving Defendants file their Motion to Compel and respectfully request that this Court enter an Order compelling the Plaintiff to respond to discovery as propounded to him by these Defendants immediately, or in the alternative, and in the event the Court grants Defendants extension of time to conduct discovery and file dispositive motions, would respectfully ask the Court to enter an order compelling Plaintiff to respond to

discovery within ten (10) days of the Court's Order.

RESPECTFULLY SUBMITTED, this the 28<sup>th</sup> day of August, 2009.

**SHERIFF BRISOLARA, FORMER SHERIFF  
GEORGE H. PAYNE, JR., DIANNE GASTON-RILEY,  
CAPTAIN PHIL TAYLOR, DEFENDANTS**

**BY: DUKES, DUKES, KEATING & FANECAL, P.A.**

BY: s/Cy Faneca  
CY FANECAL

Cy Faneca, MSB #5128  
Jon S. Tiner, MSB #101733  
**DUKES, DUKES, KEATING AND FANECAL, P.A.**  
2909 13th St., Sixth Floor  
Post Office Drawer W  
Gulfport, MS 39502  
Telephone: 228/868-1111  
Facsimile: 228/863-2886

**CERTIFICATE OF SERVICE**

I, CY FANeca, do hereby certify that I have this day electronically filed and delivered, via United States Mail, postage fully pre-paid, a true and correct copy of the above and foregoing pleading to the following:

John A. Ortland c/o Mason Ulm Taylor  
10325 34<sup>th</sup> Avenue  
Gulfport, Mississippi 39503  
*Plaintiff*

Karen J. Young, Esquire  
Post Office Box 1076  
Gulfport, Mississippi 39502  
*Attorney for Harrison County, Mississippi*

Ian A. Brendel, Esquire  
Post Office Box 1839  
Gulfport, Mississippi 39502  
*Attorney for Rick Gaston*

Robert H. Pedersen, Esquire  
Post Office Box 650  
Jackson, Mississippi 39205-0650  
*Attorney for Health Assurance, LLC*

This, the 28<sup>th</sup> day of August, 2009.

s/Cy Faneca  
CY FANeca

Cy Faneca, MSB #5128  
Jon S. Tiner, MSB #101733  
**DUKES, DUKES, KEATING AND FANeca, P.A.**  
2909 13th St., Sixth Floor  
Post Office Drawer W  
Gulfport, MS 39502  
Telephone: 228/868-1111  
Facsimile: 228/863-2886